

REMARKS

The applicant wishes to thank the Examiner for the courtesies extended to the applicant's representative during the telephone interview conducted on May 7, 2003, the several rejections proffered by the Examiner in the Official Action dated April 10, 2003 being discussed during the interview. Note is also made of the telephone calls of May 5 and 6 necessary to clarify the rejection under 35 USC 101.

In light of the Official Action and in light of the interview, the applicant has amended the claims of the application in several respects and has added new claims 17 through 24. For simplicity, the applicant wishes to take up the several rejections in the order of appearance in the Official Action.

Considering first the rejection of claim 4 under 35 USC 112, second paragraph, as being indefinite, the applicant notes that the word "listing" in line 2 of the claim should have been the word "limiting" and this amendment has been made to claim 4. Accordingly, it is believed that the rejection of claim 4 under 35 USC 112, second paragraph, would no longer apply to claim 4 as herein asserted.

Considering next the rejection under 35 USC 101 of claims 1 and 6, it is to be noted that claim 1 has been amended to incorporate the subject matter of now-cancelled claims 2 and 3, this subject matter now being asserted in the application in the form of claim 1(amended). The applicant believes that method claims 1(amended), 4-6 and new claim 17 avoid any rejection under 35 USC 101 since these claims meet the definition of a "statutory process" through reference to apparatus and by the transformation of subject matter or reduction thereof to a different state. The applicant believes that 35 USC 101 would not apply to any claim herein asserted.

Considering now the rejection of claims 1 through 16 under 35 USC 102(a) in view of Henderson, the applicant wishes to first discuss the legal provision upon which this rejection is based. In particular, the applicable law holds that a reference is properly applied to a claim if the claim recites an invention that was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent. The Henderson reference is totally deficient in all regards for use in any rejection of any of the claims under 35 USC 102(a). In particular, the Henderson reference does not show that the invention was "known or used by others in this country". The Henderson reference is an article from a periodical dated October, 1999, this article describing in very general terms the very technology that is the subject of the present patent application. Accordingly, this reference does not show that the invention was known or used by others in this country. Actually, the reference does not show the invention at all as must occur according to the remaining portion of 35 USC 102(a). First of all, however, the Henderson reference is not a patent so this reference does not constitute the patenting of the invention before the invention thereof by the applicant. Secondly, as to the description provided in Henderson, the very general discussion provided in this article does not constitute description of the invention in a printed publication before the invention thereof by the applicant for a patent. Very clearly, the description given in the Henderson reference does not constitute an invention "before the invention thereof by the applicant for a patent". To wit, the Henderson article refers to the very technology that is the subject of this patent application. How then can the Henderson article constitute a printed

publication that describes the invention "before the invention thereof by the applicant for a patent"?

If further elucidation of the law needs to be offered relative to the 102(a) rejection, it should be noted still further that nothing in the Henderson reference would provide a person of ordinary skill in the art any ability whatsoever to make and/or practice the invention disclosed in the present patent application and recited in the claims herein asserted. The Henderson reference merely provides a very general and vague description of the results that can be obtained from the use of the present invention. The Henderson reference in no way provides an enabling disclosure that would permit a person of ordinary skill in the art to make and use the invention recited in the claims herein asserted. Accordingly, the Henderson reference cannot be used in a rejection under 35 USC 102(a).

The Examiner must also consider still further the fact that the date of the Henderson reference is October of 1999. The filing date of the present application is September 11, 2000, the filing date thus being within one year of the date of the Henderson reference. Basic patent law holds that an applicant would have one year from the date of a printed publication to file an application for patent even if he completely and totally describes his invention in such a printed publication. In other words, the applicant could have published the very patent application now being examined in October of 1999 and still would not have the burden of overcoming that publication as a reference by virtue of filing of his application on September 22, 2000. Again, very basic patent law.

The applicant wishes to note here that the Examiner has refused to reconsider the 102(a) rejection even though the applicant's representative presented during the aforesaid

interview the same arguments presented above for the position that the Henderson reference simply cannot be applied under 35 USC 102(a). The Examiner was extraordinarily proprietary in his defense of "his" 102(a) rejection to the extent of not even permitting the applicant's representative to complete a sentence and ever "talking over" the applicant's representative until said representative simply had to stop speaking. In thirty-seven years of practice before the Patent Office, the applicant's representative has never been subjected to such behavior. Worse, the Examiner was completely in error in his understanding of the situation and refused to entertain the notion that he could be wrong in any way. The applicant believes that this lack of understanding and this attitude is extraordinarily important to note for the record especially in view of the Examiner's further use of the Henderson reference inter alia in a rejection of claims 1 through 16 under 35 USC 103(a). During the interview, the Examiner took the very same intractable position relative to the 103(a) rejection as he took relative to the 102(a) rejection. The applicant believes that the Examiner has erred relative to both rejections and specifically requests that, if the Examiner continues with his ill-advised rejection under 35 USC 103(a), that he continue the rejection under 35 USC 102(a) so that supervisory review and/or appeal to the Board of Appeals will have this direct evidence of his intractability even in the face of overwhelming argument that completely negates the Examiner's position on a matter as clear cut as the erroneous 102(a) rejection.

Considering now the rejection of claims 1 through 16 under 35 USC 103(a), the Examiner contends that the applicants have "admitted" on page 2, line 17 through page 3, line 20 of the present specification that manual systems for "flight firming are old and well known" and that applicant has merely automated the process. An actual review of

this passage from the applicant's specification simply notes that a flight firming method can be accomplished manually. However, the specification does not say that the disclosed methodology is the same or even remotely resembles any prior art manual method. The Examiner must also take note of the fact that the prior manual method referred to was not widely used due to the fact that it simply could not be accomplished in any useful manner. The fact that the present methods as recited in the claims herein asserted actually causes flight firming to be a reality shows very clearly that a new and unexpected result is achieved in light of the undeniable fact that the prior art never provided such a result. The present methodology as claimed provides a result that cannot be obtained with any prior manual process. Therefore, the recited methodology cannot be obvious. Indeed, the recited methodology is unobvious and therefore patentable.

The general statement taken from a 45-year old court decision that the automation of a known process is obvious simply does not apply in this situation. Notice is taken that the situation in the precedent cited related to a known process manually performed that could indeed be successfully performed by manual means. The court simply noted that automation of the process in question could not be accorded patentable moment since no new and/or unobvious result was obtained. At the time of *In re Venner*, "automation" on the order of the use of computer technology to transform a process having no utility to a process having substantial utility was not even a gleam in the eyes of the most prescient among us. The holding of *In re Venner* simply cannot be used in a reading of the statement in the present patent application to conclude that the methodology and apparatus herein asserted is obvious. In fact, the Examiner notes in his own words that *In re Venner* holds that a known process is obvious if merely automated. But somehow the

Examiner also applies this reasoning to the apparatus claims herein asserted. Clearly, the Examiner has erred in this rejection.

The very same logic expressed above relative to a rejection under 35 USC 103(a) in view of "admitted prior art" also applies to the exceedingly brief passage on page 1, lines 27 through 30 of Henderson. The Henderson reference provides even less in the way of pointing out the nature of any prior manual process and its relationship to the processes and apparatus herein claimed.

The Examiner has failed to produce prior art pertinent to claims 1(amended), 4-6 and 7(amended) through 24. The methodology of claims 1(amended), 4-6 and 17 avoid the prior art cited by the Examiner and known to the applicant for the reasons given hereinabove. The apparatus claims of claims 7(amended) through 16 and 18 through 24 also avoid the prior art cited by the Examiner and known to the applicant. Independent claims 7(amended) and 19 very clearly recite apparatus that enables the realization of results not previously present in the art. Further, dependent claims such as claims 11 inter alia provide subject matter not previously even remotely considered in the prior art. Accordingly, the claims herein asserted recite novel invention and are clearly patentable. In this regard, the Examiner must be cognizant of the fact that he has an obligation to allow claims to patentable invention as fully as he is obligated to disallow unpatentable invention. In this regard, the Examiner has a further obligation to point out any manner of asserting patentable invention in claims otherwise objected to merely as to matters of form.

The applicant notes the prior art made of record but not applied to any claim originally asserted. These references include the patents to Boies et al, Walker et al,

DeLorme et al, Kelly et al, Danelkoff et al, Tagawa and Osaki. However, none of these references are pertinent to any claim herein asserted.

For the reasons thus provided, the applicant believes that the claims herein asserted are patentable over the art of record. Allowance of all claims herein asserted is therefore respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kenneth E. Darnell". The signature is fluid and cursive, with the first name "Kenneth" and last name "Darnell" being clearly legible.

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1. (Amended) A method for automated firming of reservations made by a reserving entity for services or goods and which are to be confirmed such as by payment for said services or goods prior to delivery of the services or goods, which reservations are listed in a database of reservations, comprising the steps of:

accessing the database of reservations with a computer;

identifying new reservations not previously subjected to firming processes, the new reservations being identified by a computer program;

acquiring and applying a set of limiting standards which are applied to each reservation;

determining those reservations not yet confirmed; and,

informing the reserving entity in accordance with the set of limiting standards of the need to confirm the reservation before expiration of time limitations established by the set of limiting standards, all steps of the method being accomplished by a computer program.

4: (Amended) The method of claim 1 wherein the computer program assigns a new reservation to a robot, the robot assigning all or any portion of the limiting standards to the reservation according to limitations imposed by the standards and issuing a warning message to the reserving entity in the event the reservation is not confirmed.

5. (Amended) The method of claim 4 wherein the computer program checks reservations for expired limiting standards and assigns the reservations to a second robot which checks the reservation to determine if the reservation is confirmed and, if not, either ignores, cancels, queues, or updates the reservation or adds another warning message to the reservation for informing the reserving entity depending upon a second set of limiting standards.

7. (Amended) A system for firming flights in a central reservations system wherein the system includes a computer and at least one computer program for providing instructions to the computer, the central reservations system listing flight reservations issued by at least one reserving entity, the reservations being subject to ticketing according to a set of ticketing time limit rules, comprising:

first means for obtaining reservations from the central reservations system and for obtaining the rules to be applied to the reservations;

second means for identifying new reservations not previously subjected to flight firming and for assigning the new reservations for flight firming processes;

third means accepting at least one of the new reservations for assigning one or more rules of the ticketing time limit rules to the reservation and for adding a warning message to the reservation in the event the reservation is not ticketed; and,

fourth means for informing the reserving entity of the need to ticket the reservation subject to a certain set of conditions.